

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case Number 15-20472
Honorable David M. Lawson

KENNETH SMITH,

Defendant.

**ORDER GRANTING MOTION FOR COMPETENCY
HEARING AND INDEPENDENT EVALUATION**

On February 22, 2016, defendant Kenneth Smith pleaded guilty to conspiracy to violate the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(d) and failure to appear in court, 18 U.S.C. § 3146(a)(1), and his sentencing hearing was scheduled for June 2, 2016. Thereafter, Smith's attorney's motion to withdraw was granted and new counsel was appointed to represent Smith under the Criminal Justice Act on August 1, 2016. New counsel sought a psychological evaluation of the defendant to aid in preparing a sentencing memorandum. Smith was evaluated in the Sanilac County Jail on September 9, 2016 by Jennifer Zoltowski, a limited license psychologist. After the evaluation, Ms. Zoltowski expressed concern about Smith's ability to understand the nature and object of the proceedings against him, due to his history of abuse as a child, an early history of drug abuse, and an extremely low intelligence quotient.

Thereafter, counsel for the defendant filed a motion for a competency evaluation on October 21, 2016, asking that the sentencing not proceed until the defendant's competency can be determined under 18 U.S.C. § 4241(d). The Court held a hearing on the motion on November 8, 2016. After review of the motion and the report of Ms. Zoltowski, the Court determined that there was

reasonable cause to believe that the defendant may be suffering from a mental disease or defect that may render him incompetent to stand trial or otherwise proceed in the case within the meaning of 18 U.S.C. § 4241(a) & (d). As a result, the Court directed that a competency examination take place and adjourned the sentencing hearing without date.

The defendant was transported to an appropriate facility and underwent a psychological evaluation by an examiner retained by the government. The examiner prepared a report, which was submitted to the Court. Subsequently, on March 8, 2017, the defendant filed a motion for a competency hearing and for an independent evaluation of the defendant's mental condition. On April 26, 2017, the Court held a hearing on the defendant's motion for a hearing and to appoint an examiner to conduct an independent evaluation. At the end of the hearing, the Court announced from the bench its decision to grant the defendant's motion.

Accordingly, it is **ORDERED** that the defendant's motion for a competency hearing and to appoint an independent evaluator [dkt. #343] is **GRANTED** for the reasons stated on the record.

It is further **ORDERED** that Doctor Jack Haynes is appointed, authorized, and directed to examine the mental condition of defendant Kenneth Smith in accordance with 18 U.S.C. §§ 4241(a), (b), and 4247(b) at the expense of the government.

It is further **ORDERED** that the examining psychiatrist or psychologist shall prepare, as soon as practical, a written report that includes (1) the defendant's history and present symptoms; (2) a description of the psychiatric, psychological, and medical tests that were employed and their results; (3) the examiner's findings; and (4) the examiner's opinions as to diagnosis, prognosis, and whether the defendant is suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the

proceedings against him or to assist properly in his defense as required by 18 U.S.C. §§ 4241(b), 4247(c).

It is further **ORDERED** that the examiner must complete his examination and submit his written report to the Court and to counsel for the parties, in accordance with 18 U.S.C. § 4247(c), **on or before May 24, 2017.**

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: April 26, 2017

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on April 26, 2017.

s/Susan Pinkowski
SUSAN PINKOWSKI